

the “(C) election limitation” for 1976, H may contribute up to \$7,500 without increasing M’s gross income for that year.

Example (3). G, a teacher, is an employee of E, an educational institution described in section 151(e)(4). G uses the calendar year as the taxable year and G uses the 12-month consecutive period beginning July 1 as the limitation year. G has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) for taxable year 1976 of \$12,000 and G has compensation (as defined in section 415(c)(3)) for the limitation year ending with or within taxable year 1976 of \$12,000. G has 20 years of service (as defined in § 1.403(b)-1(f)) as of May 30, 1976, the date G separates from the service of E. During G’s service with E before taxable year 1976, E had contributed \$34,000 toward the purchase of a section 403(b) annuity contract on G’s behalf, which amount was excludable from G’s gross income for such prior years. Of this amount, \$19,000 was so contributed and excluded during the 10 year period ending on May 30, 1976. For the taxable year 1976, G’s exclusion allowance determined under section 403(b)(2)(A) is \$14,000 $((.20 \times \$12,000 \times 20) - \$34,000)$. Absent the special elections described in section 415(c)(4), \$3,000 (the lesser of G’s exclusion allowance for taxable year 1976 or the section 415(c)(1) limitation applicable to G for the limitation year ending with or within such taxable year) would be the maximum excludable contribution E could make for section 403(b) annuity contracts on G’s behalf for the limitation year ending with or within taxable year 1976. However, because E is an organization described in section 415(c)(4), G may make a special election with respect to amounts contributed on G’s behalf by E for section 403(b) annuity contracts for the limitation year ending with or within taxable year 1976. Because G has separated from the service of E during such taxable year, G may elect the “(A) election limitation” as well as the “(B) election limitation” or the “(C) election limitation”. If G elects the “(A) election limitation” for the limitation year ending with or within taxable year 1976, E could contribute up to \$5,000 $((.20 \times \$12,000 \times 10) - \$19,000)$ on G’s behalf for section 403(b) annuity contracts for such limitation year without increasing G’s gross income for the taxable year with or within which such limitation year ends. If G elects the “(B) election limitation” for such limitation year, E could contribute \$7,000 (the least of \$7,000 (the amount described in section 415(c)(4)(B)(i)); \$14,000 (the amount described in section 415(c)(4)(B)(ii)); and \$15,000 (the amount described in section 415(c)(4)(B)(iii))). If G elects the “(C) election limitation” for taxable year 1976, E could contribute \$3,000 (the lesser of the amounts described in section 415(c)(1) (A) or (B)).

(d) *Plan year.* For purposes of section 415 and this section, an annuity contract described in section 403(b) shall be deemed to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased unless that individual demonstrates that a different 12-month period should be considered to be the plan year.

(e) *Effective date.* The provisions of this section are applicable for taxable years beginning in and for limitation years ending with or within taxable years beginning in 1976.

(Sec. 415(c)(4)(D) of the Internal Revenue Code of 1954 (88 Stat. 983; 26 U.S.C. 415(c)(4)(D)))

[T.D. 7442, 41 FR 52296, Nov. 29, 1976, as amended by T.D. 7531, 43 FR 1065, Jan. 6, 1978]

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Sec.

- 12.3 Investment credit, public utility property elections.
- 12.4 Election of Class Life Asset Depreciation Range System (ADR).
- 12.7 Election to be treated as a DISC.
- 12.8 Elections with respect to net leases of real property.
- 12.9 Election to postpone determination with respect to the presumption described in section 183(d).

AUTHORITY: 26 U.S.C. 167, 263, and 7805.

§ 12.3 Investment credit, public utility property elections.

(a) *Elections—(1) In general.* Under section 46(e), three elections may be made on or before March 9, 1972, with respect to section 46(e) property (as defined in subparagraph (3) of this paragraph). An election made under the provisions of section 46(e) shall be irrevocable.

(2) *Applicability of elections.* (i) Any election under section 46(e) shall be made with respect to all of the taxpayer’s property eligible for the election whether or not the taxpayer is regulated by more than one regulatory body.

(ii) (a) Paragraph (1) of section 46(e) shall apply to all of the taxpayer’s section 46(e) property in the absence of an election under paragraph (2) or (3) of

section 46(e). If an election is made under paragraph (2) of section 46(e), paragraph (1) of such section shall not apply to any of the taxpayer's section 46(e) property.

(b) An election made under the last sentence of section 46(e)(1) shall apply to that portion of the taxpayer's section 46(e) property to which paragraph (1) of section 46(e) applies and which is short supply property within the meaning of § 1.46-5(b)(2) of this chapter (Income Tax Regulations) as set forth in a notice of proposed rule making published in 37 FR 3526 on February 17, 1971.

(iii) If a taxpayer makes an election under paragraph (2) of section 46(e), and makes no election under paragraph (3) of such section, the election under paragraph (2) of section 46(e) shall apply to all of its section 46(e) property.

(iv) If a taxpayer makes an election under paragraph (3) of section 46(e), such election shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies. Paragraph (1) or (2) of section 46(e) (as the case may be) shall apply to that portion of the taxpayer's section 46(e) property which is not property to which section 167(l)(2)(C) applies. Thus, for example, if a taxpayer makes an election under paragraph (2) of section 46(e), and also makes an election under paragraph (3) of section 46(e), paragraph (3) shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies and paragraph (2) shall apply to the remainder of the taxpayer's section 46(e) property.

(3) *Section 46(e) property.* "Section 46(e) property" is section 38 property which is both property described in section 50 and is—

(i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property of the type described in the last sentence of section 46(c)(3)(B)), or

(ii) Property used predominantly in the trade or business of the furnishing or sale of (a) steam through a local distribution system or (b) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality,

or commission described in section 46(c)(3)(B).

(b) *Method of making elections.* A taxpayer may make the elections described in section 46(e) by filing a statement, on or before March 9, 1972, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules in the case of taxpayers filing consolidated returns, see § 1.1502-77(a) of this chapter (Income Tax Regulations). Such statement shall contain the following information:

(1) The name, address, and taxpayer identification number of the taxpayer,

(2) The paragraph (or paragraphs) of section 46(e) under which the taxpayer is making the election,

(3) If an election is made under the last sentence of section 46(e)(1), the name and address of all regulatory bodies which have jurisdiction over the taxpayer with respect to the section 46(e) property covered by such election and a statement setting forth the type of the public utility activity described in section 46(e)(5)(B) in which the taxpayer engages, and

(4) If an election is made under paragraph (3) of section 46(e), a statement indicating whether an election has been made by the taxpayer under section 167(l)(4)(A).

[T.D. 7161, 37 FR 3511, Feb. 17, 1972]

§ 12.4 Election of Class Life Asset Depreciation Range System (ADR).

(a) *Elections filed before February 1, 1972.* No election or tax return shall be filed which does not conform to section 109 of the Revenue Act of 1971 (Pub. L. 92-178, 85 Stat. 508). If a taxpayer has before February 1, 1972 filed an election and a tax return in accordance with § 1.167(a)-11 of this chapter (relating to depreciation allowances using the Asset Depreciation Range System published in the FEDERAL REGISTER for June 23, 1971), such election will be treated as an election under the Class Life Asset Depreciation Range System (ADR) as contained in section 109 of the Revenue Act of 1971 and the proposed amendments to § 1.167(a)-11 of this chapter published in the FEDERAL REGISTER for January 27, 1972, provided that the election conforms with the